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In the

Supreme Court of the United States

BILLIE B. LINE, JR.

Petitioner,

v.

PAMELA ALONSO

Respondent.

Petition for a Writ of Certiorari to the
Supreme Court of Louisiana

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a state court, consistent with Due Process, may extend jurisdiction solely on the basis of the criteria listed in its Long Arm Statute over a nonresident who has not purposefully directed his activities at the forum state.

Whether Due Process limits the exercise of state court personal jurisdiction over a nonresident attorney, not licensed in the forum, who accepted representation of a case without knowledge of its legal implications in the forum state.

Whether a nonresident defendant's mere awareness of a connection with the forum state, without evidence of an intent to direct his activities at the forum, is sufficient to support the exercise of personal jurisdiction consistent with Due Process.

Whether this Court's subjective standard of purposeful availment for determining the existence of minimum contacts should be replaced by the Louisiana Supreme Court's objective test based on foreseeability, thereby greatly expanding the jurisdictional reach of state courts over nonresidents given the proliferation of interstate contacts resulting from recent advances in technology.

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IN THE

SUPREME COURT OF THE UNITED STATES

BILLIE B. LINE, JR., Petitioner

V.

PAMELA ALONSO, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

OPINIONS AND ORDERS ENTERED

The Louisiana Supreme Court's grant of Respondent's application for supervisory or remedial writs is reported at 2002-2644, 833 So.2d 944 (La. 01/10/03) and is reprinted in the appendix hereto, p.1a, *infra*. The opinion of the Louisiana Supreme Court is reported at 2002-2644, 846 So.2d 745 (La. 05/20/03) and is reprinted in the appendix hereto, p. 2a, *infra*. The opinion of the First Circuit Court of Appeal of Louisiana granting Petitioner's exception of lack of personal jurisdiction has not been reported. It is reprinted in the appendix hereto, p.16a, *infra*. The opinion of the Nineteenth Judicial District Court denying Petitioner's

exception of lack of personal jurisdiction is not reported and is reprinted in the appendix hereto, p.18a, *infra*.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Louisiana denying the Petitioner's exception of lack of personal jurisdiction was entered on May 20, 2003. No petition for rehearing was sought. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

RELEVANT PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part that no State "[shall] deprive any person of life, liberty, or property, without due process of law..."

The Louisiana Long Arm Statute, LSA-R.S. 13:3201, in pertinent part provides:

> *A. A court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a cause of action arising from any one of the following activities performed by the nonresident:*
>
> *(1) Transacting any business in this state.*
>
> *(2) Contracting to supply services or things in this state.*
>
> *(3) Causing injury or damage by an offense or quasi offense committed through an act or omission in this state.*

B. In addition to the provisions of Subsection A, a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and the Constitution of the United States.

STATEMENT

Respondent, Pamela Alonso, was involved in an automobile collision on January 14, 1998 while traveling in East Baton Rouge Parish. (R. 90) At the time, Ms. Alonso was living in Alabama as an Alabama resident. Petitioner, Mr. Line, a real estate lawyer in a solo practice, had previously handled some closings for Ms. Alonso's mortgage company in Alabama. In March of 1998 she contacted him in Alabama with respect to the automobile accident. (R. 89-90) Ms. Alonso asked him to handle any contact with the insurance adjuster, who was located in Huntsville, Alabama. (R. 91, 98) Mr. Line's intention was to work out a settlement with the adjuster. (R. 114-115) Although he acknowledges that he accepted representation in the matter, Mr. Line did not expect to file suit, but planned to refer the claim to an Alabama personal injury attorney if settlement could not be reached with the insurance company. (R. 114, 118-119)

In the latter part of 1999, Ms. Alonso contacted Mr. Line regarding the status of the claim. (R. 92-93) Mr. Line contacted the adjuster in Huntsville, Alabama for the second time, and was advised by the adjuster that Louisiana law and its one year statute of limitations applied and that the claim was time barred. (R. 116-117) Mr. Line, who was soleiy licensed to practice in Alabama, contacted a Louisiana attorney he located in Martindale-Hubbell to confirm that the Louisiana

prescriptive period applied and had expired. Mr. Line never considered the possibility that suit could be filed in Louisiana prior to his follow-up conversation with the adjuster. (R. 116-117) He believed the suit could be filed in Alabama because Ms. Alonso was an Alabama resident. (R. 117) As Mr. Line explained, "I really didn't have any idea that she couldn't [sue in Alabama]." He admitted that he later realized he had acted with "ineptness" and "blew it." (R. 50) As to Mr. Line's sworn belief that he thought Alabama rather than Louisiana law applied and that no Louisiana action or involvement would be required, Ms. Alonso admitted she had no reason to believe that Mr. Line, who she considered to be a man of his word, was not telling the truth. (R. 26)

On January 11, 2001, the Respondent filed suit in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, alleging that Mr. Line and the law firm of Wisner, Adams, Walker & Line, P.C. committed legal malpractice. (R. 3-5)[1] Mr. Line filed an exception to the jurisdiction of the Louisiana court on the grounds that jurisdiction could not be exercised against him consistent with federal due process.

On March 15, 2002 the trial judge issued a document entitled "Written Reasons" in which he set out the basis for his decision. (App., *infra*, p. 17a) Although the court was apparently persuaded by Mr. Line's testimony on the jurisdictional issue that he had not intentionally transacted any business in the state of Louisiana nor engaged in any persistent contact with the state of Louisiana, the court denied the exception on the grounds that a second service of the summons and complaint to Mr. Line while he was in the courtroom

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[1] Mr. Line joined the law firm in 1999 after being retained by Ms. Alonso. The firm has been dismissed and is no longer a party to these proceedings.

waiting to give testimony on the exception was sufficient to confer transient personal jurisdiction over him.[2] Mr. Line timely filed an application for supervisory writs with the Louisiana First Circuit Court of Appeal on April 15, 2002.

On September 24, 2002, the Louisiana First Circuit Court of Appeal granted the writ application, reversed the trial court judgment and granted the exception of lack of personal jurisdiction of Billie B. Line, Jr. and Wisner, Adams, Walker & Line, P.C. The First Circuit ruled on the basis of the federal constitutional question that "there were insufficient minimum contacts with the State of Louisiana to exercise personal jurisdiction over the nonresident defendants." (App., infra, p. 16a).

On January 10, 2003, the Louisiana Supreme Court granted the Respondent's writ, which was filed on October 25, 2002. It issued its decision on May 20, 2003. It is from this ruling on a substantial federal question that Petitioner seeks to invoke the discretionary jurisdiction of this Court. The Louisiana Supreme Court found that Petitioner's actions constituted the "contracting to supply services in the State"[3] and "causing injury or damage by an offense or quasi offense committed through an act or omission in this state"[4] as enumerated in the Louisiana Long Arm Statute. *Alonso v. Line*, 2002-2644, 846 So.2d 745,752 (La. 05/20/03). The

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[2] The Louisiana Supreme Court did not decide the case on the basis of the transient jurisdiction doctrine as expressed in *Burnham v. Superior Court*, 495 U.S. 604 (1990), and this issue is not before this Court.

[3] LSA-R.S. 13:3201A(2).

[4] LSA-R.S. 13:3201A(3).

Louisiana Supreme Court concluded that the satisfaction of these criteria authored by the Louisiana legislature constituted compliance with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Id.*

REASONS FOR GRANTING THE PETITION

I. THE WRIT SHOULD BE GRANTED BECAUSE THE DECISION BELOW APPLIED LEGISLATIVE DEFINITIONS OF THE CONSTITUTIONAL LIMITS OF JURISDICTION RATHER THAN THIS COURT'S REQUIREMENT OF PURPOSEFUL AVAILMENT AND THEREFORE IS IN DIRECT CONFLICT WITH THE DECISIONS OF THIS COURT AS WELL AS THE COURTS OF APPEALS.

A. The Louisiana Supreme Court's announcement of a purely objective test for personal jurisdiction based on what the defendant should have known rather than actual contacts consciously intended violates Due Process as defined by this Court.

The record before this Court contains no disagreement as to the facts. Billie Line swore he did not know that any Louisiana action on his behalf was required to fulfill his duty in representing Respondent, and Respondent did not contradict this testimony. No lower court found that Mr. Line in fact knew that the suit needed to be filed in Louisiana, nor that Mr. Line otherwise intended to direct any activities toward the state of Louisiana. He did not do anything in the state of

Louisiana connected to the cause of action. Indeed, it is his negligence by omission — not taking action in Louisiana because he failed to understand that he needed to — which is the essence of the malpractice claim against Petitioner. Rather than focusing on actual contacts which were consciously intended, the Louisiana Supreme Court rendered its ruling on the basis of what it believed Mr. Line should have known had he been acting as a prudent lawyer. Although this may be an appropriate standard to apply to the merits of this or any other malpractice action, the concept that one can unintentionally and accidentally stumble into the grasp of a foreign state court is in sharp conflict with the entire modern body of this Court's jurisdictional jurisprudence.

The Fourteenth Amendment permits state courts to exercise personal jurisdiction over "a nonresident who 'purposefully directs' his activities toward forum residents." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985). A nonresident must intend that his activities substantially touch upon a foreign state before he can be said to have "purposefully avail[ed] himself of the privilege of conducting activities in the forum state." *Hanson v. Denckla*, 357 U.S. 235, 526 (1958). The purposeful establishment of a sufficient minimum contact has been the "constitutional touchstone" for the exercise of personal jurisdiction over a nonresident. *Burger King*, 471 U.S. at 473.

In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), this Court set forth the types of activities in a state that would render a nonresident corporation or individual amenable to suit in a foreign state. From that decision, many states, including Louisiana, drew their criteria for subjecting a nonresident defendant to state court personal jurisdiction under their Long Arm Statutes. This Court

later determined that in order for jurisdiction to be properly exercised, there must "be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson*, 357 U.S. at 253 (citing, *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

In the cases following *International Shoe*, this Court has consistently looked for evidence that a nonresident intended to reach out and conduct business in a foreign state. This Court also established that mere knowledge that another state's interests might be involved or affected does not satisfy the intent requirement. For example, in *Hanson*, which focused on a Florida state court's jurisdiction over a nonresident trustee, the trustee's awareness of the settlor's relocation was not enough to impute an intent to inject itself into the business of the forum state. 357 U.S. at 253.

The importance of intentional action taken toward the forum was again illustrated in *Shaffer v. Heitner*, 433 U.S. 186 (1977), in which the defendant Greyhound officers and directors knowingly held positions in a Delaware corporation. This Court held that the connection was insufficient for the exercise of personal jurisdiction over them without a demonstration that the Petitioners had taken some further action within the State of Delaware other than buying securities in a corporation formed in the state. *Id.* at 216.

Kulko v. California Superior Court, 436 U.S. 84 (1978), involving a state court's jurisdiction over a nonresident for the purpose of amending a support judgment, is another case in which the nonresident's mere knowledge of the existence of a connection between his activities and California was insufficient for

the exercise of personal jurisdiction without the "intent to obtain or expectancy of receiving a corresponding benefit in the State..." *Id.* at 101.

Calder v. Jones, 465 U.S. 783 (1984), reinforced the concept that a contact must be a knowing one to count toward jurisdictional sufficiency. In *Calder*, the Petitioners argued that their knowledge the injurious article would be published in the Respondent's home state and would have an effect there was not sufficient for the exercise of jurisdiction. Without passing on whether the Petitioner's assertion was correct, this Court found that the Petitioners' "intentional, and allegedly tortious, actions were expressly aimed at California." *Id.* at 789. Petitioner also "knew that the brunt of the injury would be felt by Respondent in the State in which she lives and works..." *Id.* at 789-790.

In *Burger King*, even though the Respondent denied knowing he would be conducting business with a Florida corporation when he entered into a long-term franchise agreement with the Miami based corporation, this Court found an intention to do so based on "substantial record evidence indicating that Rudzewicz most certainly knew that he was affiliating himself with an enterprise based primarily in Florida." 471 U.S. at 480. The evidence consisted of multiple contract documents signed by the Petitioner emphasizing the operational control exerted by the Florida headquarters and the Petitioner's obligations directed to it. *Id.* This knowledge, plus the affirmative act of the Petitioner in reaching out to a nationwide corporation based in Florida for the benefits of a long-term franchise arrangement, was the basis for this Court's finding of minimum contacts. This Court emphasized that jurisdiction is appropriately exercised over one who "deliberately has engaged in significant activities within a state." *Id.* at 475-476.

The insufficiency of a nonresident's mere knowledge of a connection to a foreign state to constitute purposeful availment and thereby support a finding of minimum contacts has been well illustrated in the products liability realm. This Court has recognized the need for more than the "defendant's awareness that the stream of commerce may or will sweep the product into the forum State" before minimum contacts can be found. *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 112 (1987). In *Asahi*, the concurring justices of the Court questioned whether the tire valve manufacturer's course of business reflected more than a mere "awareness" that its products would reach the forum State. 480 U.S. 102, 116-121(Brennan, White, Marshall & Blackmun, JJ., concurring in part), 122-123 (Stevens, White & Blackmun, JJ., concurring in part). *Asahi* clearly refutes the notion that due process allows jurisdiction to be exercised based on foreseeability alone. As this court stated in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980), "[foreseeability] alone has never been a sufficient benchmark for jurisdiction under the Due Process clause."

The only role of foreseeability in the law of jurisdiction is that a defendant must "reasonably anticipate being haled into" the forum before jurisdiction can be established. *Id.* at 297. This can only occur if there is some deliberate activity[5] which creates

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[5] In *Burger King*, the court did not find jurisdiction based on what the defendant should have known. The Court focused on actual knowledge of deep and prolonged future involvement with the forum, plus extensive actual contacts. The Court noted that "Rudzewicz deliberately reached out" to the forum and engaged in telephone and mail contact with the forum over several months. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985).

this reasonable anticipation, and is not to be confused with an obligation to reasonably anticipate or foresee the existence of a contact with the forum. "Reasonable anticipation" as discussed by this Court is the result of, not a replacement for, purposeful availment to the forum.

This Court's minimum contacts jurisprudence has repeatedly employed the phrase "purposeful availment" for a reason. Purposeful is synonymous with intentional, and the crafting of this phrase by this Court precludes the notion that availment can be accomplished unconsciously or accidentally. This Court has repeatedly searched for real intent, and what, as in *Burger King*, the defendant "certainly knew." *Burger King*, 471 U.S. at 480. This Court has not allowed jurisdictional disputes to be decided on the basis of what someone should have been thinking.

The Louisiana Supreme Court's decision in the present case conflicts with the precedents set by this Court because it allowed jurisdiction to be based on a non-existent contact which it believes should have occurred rather than an actual contact intended by the nonresident. The knowledge that the accident in question occurred in Louisiana, which did not trigger corresponding knowledge that the engagement implied the need for Louisiana action, does not constitute a purposeful contact. The fact that Mr. Line, in the words of the Louisiana Supreme Court, "should have researched this Louisiana traffic accident case and discovered that the case was governed by Louisiana law" simply means that he did not act reasonably. Alonso v. Line, 2002-2644, 846 So.2d 745, 752 (La. 05/20/03). It does not mean that he purposefully availed himself to the state of Louisiana.

B. The Louisiana Supreme Court unconstitutionally applied the Louisiana Long Arm Statute rather than this Court's requirement for purposeful availment.

The worthiness of this case for review by this Court on the basis of its conflict with the decisions of this Court is substantially enhanced by the fact that the Louisiana Supreme Court cited and discussed, but did not apply, this Court's analytical framework for deciding jurisdictional disputes. This is not simply a case in which the lower court applied the right law to the facts incorrectly. The mechanical application of an outmoded statutory listing of "sufficient contacts" not only conflicts with this Court's holdings but also its method for assessing constitutional compliance.

The Louisiana Supreme Court wrongly focused on LSA-R.S. 13:3201 A(2) and (3), two provisions of the Louisiana Long Arm Statute, and determined that the fit of the facts to these provisions automatically conferred jurisdiction. Even though the Louisiana Supreme Court's opinion reflects recognition that this Court's constitutional jurisprudence is not trumped by the Louisiana Long Arm Statute, and that "the sole inquiry into jurisdiction over a nonresident is a one-step analysis of the constitutional due process requirements," it nevertheless proceeded to note that the Long Arm Statute constituted a "valuable list of . . . contacts sufficient to give rise to in personam jurisdiction." *Alonso v. Line*, 845 So.2d 745, 750, 2002-2644 (La. 5/20/03) (quoting *Petroleum Helicopters, Inc. v. Avco Corp.*, 513 So.2d 1188, 1192 (La. 1987)). It then treated the statute as the paramount constitutional authority in disregard for this Court's minimum contacts analysis. The Louisiana Supreme Court explicitly found that the

defendant "subjected himself to the jurisdiction of this state through LSA-R.S. 13:3201" and stated that "we find that personal jurisdiction exists under the Long Arm Statute . . ." *Id.* at 753. Nowhere in the opinion is there a finding that the purposeful availment requirement was met in the case, and indeed, such a finding is precluded under the agreed facts that Mr. Line "blew it" by failing to realize that he was dealing with a Louisiana case with a Louisiana statute of limitations.

In many circumstances "contracting to supply services... in this state"[6] and "causing injury or damage by an offense or quasi-offense committed through an act or omission in this state"[7] will coexist with purposeful availment. In other cases, however, the legislative criteria can be met without satisfying the purposeful availment requirement of the Constitution and this Court. For example, "contracting to supply services... in this state" will only constitute purposeful availment in the event it is understood that the need to supply services in the state is a component of the contract. Contracts litigation is ample testament to the fact that different parties understand the scope of obligations differently. Moreover, this Court has long recognized that "contracting with an out of state party alone . . . clearly . . . cannot" create jurisdiction. *Burger King*, 471 U.S. 462.[8]

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[6] LSA-R.S. 12:3201A(2).

[7] LSA-R.S. 13:3201A(3).

[8] It should also be noted that in Louisiana, the legal malpractice cause of action is not based on contract. *Cherokee Restaurant, Inc. v. Peirson*, 428 So.2d 995 (La. App. 1 Cir. 1983) holds that the action is based on contract rather than tort only when the attorney "warrants a particular result . . . or agrees to perform certain work and does nothing whatsoever . . ." Plaintiff has asserted no contractual causes of action in her Petition for

Finding jurisdiction against a nonresident because he is allegedly liable for "causing injury or damage by an offense or quasi-offense committed through an act or omission in this state" is especially problematic from a due process perspective. Negligence by omission, when the defendant did not know that he was supposed to do something in the forum state, is the equivalent of truly contactless jurisdiction. Basing jurisdiction on a lack of action and the absence of a palpable contact clashes with this Court's statement in *Hanson* that jurisdiction cannot exist unless "there be some *act* by which the defendant purposely avails itself of the privilege of conducting activities within the forum state." 357 U.S. at 254 [Emphasis added]. This rule requiring action has stood to the present. Absent purposeful contact, omission based jurisdiction can only be established by resorting to objective tests inquiring into what action should have been taken, that is, by the application of the improper test of foreseeability. Thus, the application of Long Arm provisions, like the use of objective tests for minimum contacts, results in the unconstitutional evasion of purposeful availment analysis.

The threshold question for determining specific jurisdiction is whether or not Mr. Line had sufficient purposeful minimum contacts with Louisiana relating to the cause of action. In a state such as Louisiana, in which the definition of jurisdiction under the Long Arm Statute is coextensive with the Fourteenth Amendment, the language of the Long Arm Statute is simply surplusage. If minimum contacts are not established, then the court cannot exercise jurisdiction regardless of what the statute says. The *sine qua non* of establishing

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Damages, and exclusively bases her claim on "negligence and malpractice."

jurisdiction is the establishment of purposeful minimum contacts with the forum. By limiting its analysis to the Long Arm Statute, the Louisiana Supreme Court sidestepped the issue of whether Petitioner purposefully directed his activities at Louisiana. Because the Petitioner lacked the intent to conduct any activities in Louisiana, he cannot have purposefully availed himself of the privileges and benefits of doing business in the state. He did not apply for admission to practice in the Louisiana court on a *pro hac vice* basis so that he could conduct legal activity in the state. He did not contact the insurance company in Louisiana, but spoke exclusively with the Alabama agent who had spoken with Pamela Alonso. He was contacted by an Alabama resident in Alabama. None of his activities reflected an intention to do business with Louisiana. His awareness that the accident occurred in Louisiana without the corresponding knowledge that this required the suit to be filed in Louisiana within one year does not support a finding of purposeful minimum contacts.

C. The decision of the Louisiana Supreme Court conflicts with decisions of the Federal Circuit Courts.

The United States Appeals Courts have understandably embraced the requirement that a defendant affirmatively and intentionally create a contact with the forum State before minimum contacts can be found. The Courts of Appeals have uniformly rejected jurisdiction based on foreseeability or what a defendant should have known.

The United States Third Circuit Court of Appeals addressed the application of the minimum contacts test to the operation of a commercially interactive website

on the internet that was accessible in the forum state in *Toys "R" Us, Inc. v. Step Two S.A.*, 318 F.3d 446 (3d Cir. 2003). The court found that evidence of "intentional interaction with the forum state" such as that which occurs when a web site operator "intentionally targets the site to the forum state and/ or knowingly conducts business with forum state residents via the site" was necessary to satisfy the "purposeful availment" requirement. *Id.* at ¶ 29.

The United States Court of Appeals, First Circuit, found that when the evidence did not meet the requirement that "the defendants must have acted toward the forum with sufficient intent to make them 'reasonably anticipate being haled into court there'," the court lacked personal jurisdiction over the defendants. *Noonan v. The Winston Company, et al.*, 135 F.3d 85, ¶ 30 (1st Cir. 1998) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297(1980)). In *Noonan*, a Massachusetts resident brought a claim against a French company that used an unauthorized photograph of him in a French advertising campaign for a cigarette company. The court found no evidence that the French company targeted the campaign beyond its French audience or was aware copies of it would reach Massachusetts, despite its international circulation. *Id.* at ¶ 31.

In *General Electric Capital Corp. v. Grossman*, 991 F.2d 1376 (8th Cir. 1993), the Eighth Circuit found that an auditing firm's direction of misleading accounting reports to G.E. Gelco in Minnesota did not create sufficient minimum contacts for the exercise of personal jurisdiction. The awareness that misleading information would be relied upon by the company in Minnesota was not sufficient to create purposeful availment without additional activity by the defendant within the state. *Id.* at ¶ 71.

The Fourth Circuit in *ALS Scan, Inc. v. Digital Service Consultants, Inc.*, 293 F.3d 707 (4th Cir. 2002), cert. denied, 123 S.Ct. 868 (2003), examined the question of whether a person electronically transmitting or enabling the transmission of information via the Internet to Maryland, and causing injury there, subjects the person to the jurisdiction of a court in Maryland. *Id.* at ¶ 35. The court emphasized that strict adherence to purposeful availment analysis was required to avoid the unconstitutional expansion of state court jurisdiction. *Id.* at ¶ 39. It thus adopted the *Zippo* test for internet transactions, requiring the direction of electronic activity into a state and a manifest intent of engaging in business in the state for minimum contacts to exist. *Id.* at ¶ 42 (citing *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997)).

In *Compuserve, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir. 1996), a Texas attorney contracted with an Ohio corporation to sell and distribute a software program he developed. When Compuserve began to market its own, apparently similar product, Patterson notified Compuserve by electronic mail of his belief that its actions infringed on his trademarks. *Id.* at ¶ 21. Compuserve sought a declaratory judgment on the question. Patterson asserted that the federal district court in Ohio lacked personal jurisdiction over him. In reversing the district court's grant of dismissal for lack of personal jurisdiction, the Sixth Circuit found "that Patterson has knowingly made an effort — and, in fact, purposefully contracted — to market a product in other states, with Ohio-based Compuserve operating, in effect, as his distribution center." *Id.* at ¶ 37. The court found further that the record demonstrated his intention to continue marketing his software through Compuserve. *Id.* at ¶ 47.

The United States Fifth Circuit Court of Appeals has also rejected foreseeability as a sole basis for exercising personal jurisdiction over a nonresident. In *Guidry v. United States Tobacco Company, Inc.*, 188 F. 3nd 619 (5th Cir. 1999), the court adopted the Restatement (Second) of Conflict of Laws, §37 (1988 Revision) reasoning and stated:

> *The fact that the effect in the state was only foreseeable will not of itself suffice to give the state judicial jurisdiction over the defendant. Juridical jurisdiction is likely to exist in such a case, however, if it was somewhat more than merely forseeable that the defendant's act would cause the particular effect in the state . . . Jurisdiction will also exist when, in addition to the effect being foreseeable, the defendant has other relationships with the state.*

The Louisiana Supreme Court's finding that the Petitioner's awareness of a Louisiana connection to his representation of the Respondent was enough to create minimum contacts puts it in direct conflict with the federal circuit court decisions establishing that awareness of a connection or mere foreseeability of the forum's involvement, without an additional affirmative intent to conduct business with the forum state, is insufficient to support a finding of minimum contacts.

II. THIS COURT SHOULD REVIEW THIS CASE IN LIGHT OF THE IMPORTANCE THAT THE CONCEPT OF PURPOSEFUL AVAILMENT PREVAIL OVER THE DOCTRINE OF MERE FORESEEABILITY ESPOUSED BY THE LOUISIANA SUPREME COURT IN THIS INCREASINGLY INTERCONNECTED SOCIETY

A. The information and communication revolution has rendered interstate relationships more prevalent and obscure, thus, the Louisiana Supreme Court's objective and mechanical test obliterates reasonable limitations on a foreign state's judicial power over citizens of other states.

This is a legal malpractice case. The expansion of multi-jurisdictional practices and engagements in the legal profession has substantially increased the likelihood of malpractice litigation over the failure of lawyers to apprehend that clients' interests need to be protected in foreign states. The emergence of these controversies which are prone to spawn jurisdictional disputes is one important reason to review this case. However, the issues raised in this case have significance reaching far beyond the realm of the legal profession. This Petition should be granted by this Court because the objective test proposed by the Louisiana Supreme Court will, for all practical purposes, scuttle the ability of citizens to defend in their own state courts lawsuits arising out of almost any endeavor. This case is important to literally every citizen capable of being sued.

With the advent of the Internet, video conferencing and other technological developments, the physical boundaries of the individual states have become less visible to the people of the United States. It is much more conceivable now than in the past that the action of an individual in one state can unknowingly have an effect in another state several hundred miles away. Once rare, unknown contacts with foreign states now occur frequently. Only a few years ago, it would have been a fluke occurrence for an individual not to know the location of the other party to a communication. Telephone calls, mail and deliveries were almost invariably made to specific places. Commercial transactions via e-mail are now on the rise, and e-mail users are often, if not usually, oblivious to the physical location of their correspondents. The prevalence of mobile cellular telephone usage means that a caller is commonly unaware of where the call will be received.

In addition to the fact that technological advances have rendered communication without reference to physical location or state possible, these transformations which easily connect remote people also mean that more and more transactions will have multi-state implications. Whereas formerly, most small businesses would only transact locally, by virtue of the Internet, interstate transactions by small businesses and individuals are facilitated. Quite simply, entering into transactions with unknown connections out of state and making unwitting contacts with parties in foreign states can and will occur with greater frequency.

The virtual erasure of state boundaries, if met with a relaxed jurisdictional rule based on a purely objective test, will result in an "anybody can be sued anywhere" civil legal system. Americans are simply making a lot more out of state contacts. Allowing courts

to go beyond purposeful contacts and additionally rest jurisdiction on unintended contacts with the forum of which the foreign citizen should have known, should have inquired about, should have researched, should have investigated or should have foreseen will wildly expand the reach of state courts beyond their territorial limits and essentially destroy any meaningful concept of state citizenship. Subjective standards based on actual intent are obviously more restrictive than objective tests, and fidelity to the rule of purposeful availment is the only hope to fulfill the promise of this Court that citizens will not have to unfairly and unpredictably defend lawsuits in far away states. Rejecting the view of the Louisiana Supreme Court is crucial to placing some reasonable limit on the jurisdictional reach of the states in a society of citizens experiencing proliferating interstate contacts.

"By requiring that individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,' *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in judgment), the Due Process Clause 'gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). The need for "fair warning" and predictability takes on a new urgency given that the Louisiana Supreme Court has announced the jurisdictional sufficiency of unknown and unintended interstate contacts flowing from agreements entered in one's home state with a fellow resident, and the failure to act in a foreign state even when the need to act was not actually known.

Like basing jurisdiction on objective tests, allowing jurisdiction to be triggered by reference to legislative checklists without respect to subjective intent increases the risk that a transaction will unknowingly subject a citizen to a long distance lawsuit. Individuals and corporations who conduct their business and activities in this highly mobile, interconnected country with obscure involvement of other states must do so with some certainty as to whether those activities will subject them to the jurisdiction of foreign courts. Adding more uncertainty, risk and potential litigation expense to transactions does not encourage commerce. This is another important reason why this Court should review this case to confirm that minimum contacts cannot exist without evidence that the nonresident defendant was aware of the connection with the forum state and intended his activities to create a relationship with the forum.

B. Review by this Court is warranted in light of the importance of preserving the egalitarian nature of the due process guarantee of the Fourteenth Amendment.

Due process is a guarantee extended to all citizens. The purposeful availment requirement constitutes a search for subjective intent, and a subjective standard treats people equally. The objective standard which the Louisiana Supreme Court derived from substantive tort law is the antithesis of the concept of procedural due process for all the litigants in our judicial system. Procedural due process is guaranteed to the guilty and the negligent as well as those who should ultimately be the winners on the merits of litigation. A definition of minimum contacts based on

foreseeability and what a "reasonable person" would do metes out due process protections preferentially to reasonable persons with foresight but fails to protect others. The Louisiana Supreme Court's decision is thus worthy of review because it affords this Court the opportunity to emphatically illustrate that procedural due process is extended to the imprudent and the prudent alike.

C. This case is appropriate for this Court's review because its record is conducive to the rendition of a clear and important jurisdictional rule of broad application.

As Petitioner has previously discussed, the Louisiana Supreme Court's decision directly conflicts with this Court's well developed body of jurisdictional jurisprudence, which establishes purposeful availment as the *sine qua non* for the exercise of jurisdiction against a nonresident. However, the fact that the Louisiana Supreme Court decided this case on the basis of the Louisiana Long Arm Statute with a record which precluded a finding of purposeful availment is testament to the fact that this Court's rule needs to be re-announced in a more explicit and unmistakable fashion.

Unlike many jurisdictional cases, this case has an extraordinarily simple and settled record, and is the perfect vehicle for this Court to examine the reach of jurisdiction in a society transformed by advances in communications. No further lower court proceedings are needed to amplify the facts for this Court, and there was no alternative state law basis of decision.

The case will turn on the question of whether due process requires an intentional contact or can be satisfied by an objective standard. There is no record

basis to argue that Mr. Line had actual knowledge that he was entering into an agreement which required Louisiana action on his part. On the other hand, Mr. Line cannot and will not dispute that although he did not know that Louisiana law applied, he should have foreseen and should have known that he needed to assure the timely filing of a Louisiana lawsuit. Indeed, this record sets up the perfect battlefield for the clash between objective and subjective tests for minimum contacts analysis under the United States Constitution. As a practical matter, this Court should review this case because it affords this Court the opportunity to decide a jurisdictional case in the context of an extraordinarily uncluttered fact pattern and fully explore the legal and policy implications to this broad issue of substantial public importance.

CONCLUSION

It is respectfully submitted that the writ of certiorari be granted.

Respectfully submitted,

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(Any footnotes trail the end of each document)

No. 2002-CC-2644

SUPREME COURT OF LOUISIANA

PAMELA ALONSO

VS.

BILLIE B. LINE, JR. AND WISNER, ADAMS, WALKER & LINE, P.C.

January 10, 2003, Decided

NOTICE: DECISION WITHOUT PUBLISHED OPINION

JUDGES: John L. Weimer, Pascal F. Calogero, Jr., Catherine D. Kimball, Bernette J. Johnson, Jeffrey P. Victory, Chet D. Traylor, Jeannette Theriot Knoll.

OPINION:
Granted.

No. 2002-CC-2644

SUPREME COURT OF LOUISIANA

PAMELA ALONSO

VERSUS

BILLIE B. LINE, JR. AND WISNER, ADAMS, WALKER & LINE, P.C.

May 20, 2003, Decided

JUDGES: VICTORY, Justice.

OPINIONBY: VICTORY

OPINION: [Pg 1] VICTORY, Justice

We granted this writ to determine whether Louisiana has personal jurisdiction over an Alabama attorney based upon either the Louisiana long-arm statute, La. R.S. 13:3201, or personal service upon the attorney in Louisiana while he was waiting to testify at a hearing on his exception of lack of personal jurisdiction. Finding that sufficient minimum contacts with Louisiana support the exercise of personal jurisdiction under La. R.S. 13:3201, we reverse the judgments of the lower courts and remand the matter to the trial court for further proceedings.

FACTS AND PROCEDURAL HISTORY

On January 14, 1998, plaintiff, Pamela Alonso ("Alonso") and her mother were involved in an automobile accident in Baton Rouge, Louisiana when they were rear ended at an intersection. At that time, Alonso was a resident of

Alabama and her mother was a resident of Louisiana, as was the driver of the other vehicle. Both vehicles were insured under contracts of insurance issued in Louisiana. In March of 1998, Alonso contacted defendant, Billie Line ("Line"), an Alabama attorney whom she had known since 1996 and who had represented her in connection with several real estate closings and related matters. Alonso told Line that she had been involved in a traffic accident in Louisiana and that she had been visited by an insurance adjuster [Pg 2] from State Farm Insurance Co. regarding the accident and asked Line if he would represent her in connection with the accident and deal with the insurance adjuster. It was Alonso's understanding that Line was going to represent her in connection with the accident and handle all aspects of the case. They discussed a fee and Line told her that the usual fee in this type of case was a one-third contingency fee but that they would wait and see what happened before committing to a fee. There was no written representation agreement. Alonso and Line went over the details of the accident, discussed the medical aspects of the case, and he subsequently called the insurance adjuster in Alabama to discuss the case. In June of 1998, Alonso moved to Louisiana, at which time she was also being represented by Line in connection with an Alabama lease dispute. Line contacted Alonso several times by telephone in Louisiana to inform her of the status of the lease dispute.

At the time Line undertook the representation, he was a sole practitioner, though in January of 1999 he joined the law firm of Wisner, Adams, Walker & Line, P.C. He confirmed that he agreed to represent Alonso in connection with the accident but testified it was never his intention to file suit. He testified that his usual practice would be to try and settle the case and if he could not, he would refer the case to another Alabama

attorney. He testified that he contacted the State Farm insurance adjuster in Alabama to inform him that he would be filing a claim on Alonso's behalf. Line testified as to his belief that because Alonso was an Alabama resident when the accident occurred, Alabama law would apply, including that state's two-year statute of limitations, and that the case could be filed in Alabama. After Alonso called him in late 1999 checking on the status of the case, in January of 2000, Line called the adjuster and was told that the adjuster had closed the file because the one-year Louisiana prescriptive period had run. Upon learning this, Line contacted a Louisiana attorney through Martindale Hubbell who confirmed that Louisiana had a one-year [Pg 3] prescriptive period that applied to this case. He then called Alonso on January 11, 2000, and told her that the statute of limitations had run. On January 11, 2001, Alonso filed a malpractice suit in Louisiana against Line and the law firm of Wisner, Adams, Walker & Line, P.C., for failing to timely pursue the matter. On January 22, 2001, Line and the law firm were served in Alabama through the Louisiana long-arm statute. They did not contest service, but filed an exception alleging lack of personal jurisdiction. The hearing was held on December 3, 2001 and Line traveled to Baton Rouge to attend and testify at the hearing. While waiting in the courtroom for the hearing to commence, he was personally served with an additional copy of the petition.

At the hearing, Alonso alleged that because personal service had been effected upon Line in Louisiana, the issue of whether personal jurisdiction existed under the Long-arm Statute was moot. The trial judge took that matter under advisement, but also heard testimony from Line regarding his contacts with Louisiana. Line testified that his only contact with Louisiana was as a free agent with the New Orleans Saints football team in 1971 when

he trained with them in Hattiesburg, Mississippi. He testified that he is not licensed to practice law in Louisiana and has never solicited business in this state or advertised in this state. Without deciding whether jurisdiction was proper under the long-arm statute, the trial court denied the exception of lack of personal jurisdiction finding that service within the state conferred personal jurisdiction. The court of appeal reversed in a 2-1 decision, ruling as follows:

WRIT GRANTED. The trial court's judgment denying relator's exception of lack of personal jurisdiction is hereby reversed, and judgment is rendered in favor of Billie B. Line, Jr. and Wisner, Adams, Walker & Line, P.C. on the basis that there were insufficient minimum contacts with the State of Louisiana to exercise personal jurisdiction over the nonresident defendants. See LSA-R.S. 13:3201; LSA-C.C.P. art. 930; and Griffith v. French, 97-2635, p. 3 (La. App. 1st Cir. 12/28/98), 723 So. 2d 1140, 1142; writ denied, 99-0220 (La. 3/19/99), 740 So. 2d 116. [Pg 4]

Alonso v. Line, 02-0786 (La. App. 1 Cir. 9/24/02). n1 We granted this writ to determine whether the Louisiana court has personal jurisdiction over Line in this case. Alonso v. Line, 833 So. 2d 944, 02-2644 (La. 1/10/03). n2

DISCUSSION

Louisiana Code of Civil Procedure article 6 defines personal jurisdiction as "the legal power and authority of a court to render a personal judgment against a party to an action or proceeding." Pursuant to that article, the exercise of personal jurisdiction in this case requires service of process on the defendant, and "the submission of the party to the jurisdiction of the court by commencing an action or by the waiver of objection

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to jurisdiction by failure to timely file the declinatory exception." La. C.C.P. art. 6(A). In addition, pursuant to La. C.C.P. art. 6, " a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and with the Constitution of the United States." La. C.C.P. art. 6(B).

[Pg 5] We discussed the history of Louisiana's long-arm Statute, whereby this state's courts can constitutionally exercise personal jurisdiction over non-residents, in Ruckstuhl v. Owens Corning Fiberglas Corp., 98-1126 (La. 4/13/99), 731 So. 2d 881, cert. denied, 528 U.S. 1019, 120 S. Ct. 526, 145 L. Ed. 2d 407 (1999), as follows:

Historically, the jurisdiction of the state courts to render judgments in personam was limited to a defendant's physical presence within the court's territorial jurisdiction. Pennoyer v. Neff, 95 U.S. 714, 733, 24 L. Ed. 565 (1877). However, recognizing the realities of modern commercial life, the United States Supreme Court in International Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), rejected the legal fiction of "presence" and instead focused its attention on the due process aspect of personal jurisdiction. The Court held that subjecting a nonresident defendant to a judgment in personam requires that he must "have certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe, 326 U.S. at 316, 66 S. Ct. 154 (citing Milliken v. Meyer, 311 U.S. 457, 463, 61 S. Ct. 339, 85 L. Ed. 278 (1940)). Further, "whether due process is satisfied must depend . . . upon the quality and nature of the activity in relation to the fair and orderly administration of the laws." Id. at 319, 66 S. Ct. at 154.

The Louisiana legislature enacted Louisiana's first Long-arm Statute in 1964 in order "to permit the courts of this state to tap the full potential of jurisdiction in personam over nonresidents permitted by International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A.L.R. 1057 (1945); and McGee v. international Life Insurance Company, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957)." La. R.S. 13:3201, Comment (a).

731 So. 2d at 884.

The original long-arm statute, La. R.S. 13:3201, listed specific activities by a defendant which would subject it to the personal jurisdiction of this state, as follows:

A court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a cause of action arising from the non-resident's:

(a) transacting any business in this state:

(b) contracting to supply services or things in this state;

(c) causing injury or damage by an offense or quasi offense committed through an act or omission in this state;

(d) causing injury or damage in this state by an offense or [Pg 6] quasi offense committed through an act or omission outside of this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state; or

(e) having an interest in, using, or possessing a real or immovable property in this state.

In addition, La. R.S. 13:3202 expressly limited La. R.S. 13:3201 to causes of action arising from acts or omission enumerated therein. n3

Accordingly, "the limits of the Louisiana Long-arm Statute and the limits of constitutional due process are now coextensive." Petroleum Helicopters, Inc. v. Avco Corp., 513 So. 2d 1188, 1192 (La. 1987). "Now, under the express wording of the present Long-arm Statute, the sole inquiry into jurisdiction over a nonresident is a one-step analysis of the constitutional due process requirements." Id.

731 So. 2d at 885.

"Since the 1987 amendment, the courts generally have ignored the original [statutorily-enumerated] long-arm provisions." "However, the specific contacts listed in LSA-R.S. 13:3201A, which once set out the limits of Louisiana's long-arm [Pg 7] jurisdiction, now serve as a 'valuable list of . . . contacts sufficient to give rise to in personam jurisdiction.'" Frank L. Maraist and Harry T. Lemmon, Louisiana Civil Law Treatise, Vol. 1, Civil Procedure, § 2.3, p. 15 (19991) (citing La. R.S. 13:3201, cmt. 1987).

"The due process test first enunciated in International Shoe requires that in order to subject a nonresident defendant to a personal judgment, the defendant must have certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Ruckstuhl, supra at 885 (citing International Shoe, supra, 326 U.S. at 320, 66 S. Ct. at 160). "The test has evolved into a two-part test, the first part being the 'minimum contacts' prong, which is satisfied by a single act or actions by which the defendant 'purposefully

avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." Id. (Citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183, 85 L. Ed. 2d 528 (1985); Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1239, 2 L. Ed. 2d 1283 (1958)). "The nonresident's 'purposeful availment' must be such that the defendant 'should reasonably anticipate being haled into court' in the forum state." Id. (Citing Worldwide Volkswagen, supra, 444 U.S. at 297, 100 S. Ct. 559).

"By requiring that a defendant must have purposefully availed himself of the p ivilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws, the requirement ensures that he will not be haled into a jurisdiction solely as a result of a random, fortuitous or attenuated contact, or by the unilateral activity of another party or a third person." de Reyes v. Marine Management & Consulting, Ltd., 586 So. 2d 103, 106 (La. 1991) (citing Asahi Metal industry Co. v. Superior Court of California, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. [Pg 8] 2d 92 (1987)); Burger King Corp., supra; Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984); World-Wide Volkswagen, supra).

Once the plaintiff meets his burden of proving minimum contacts, "a presumption of reasonableness arises" and "the burden then shifts to the opposing party to prove the assertion of jurisdiction would be so unreasonable in light of traditional notions of fair play and substantial justice as to overcome the presumption of reasonableness created by the defendant's minimum contacts with the forum." Ruckstuhl, supra at 886; de Reyes, supra at 107 (citing 4 Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure, Sec. 1067, pp. 301-302). In determining this fundamental

fairness issue, courts must examine (1) the defendant's burden; (2) the forum state's interest; (3) the plaintiff's interest in convenient and effective relief; (4) the judicial system's interest in efficient resolution of controversies; and (5) the state's shared interest in furthering fundamental social policies. Ruckstuhl, supra at 890. n4

Alonso argues that jurisdiction is proper under the following sections of the long-arm statute: (1) contracting to supply services in this state; (2) causing injury or damage by an offense or quasi offense committed through an act or omission in this state; and (3) causing injury or damage in this state through an omission outside the state if the nonresident derives revenue from services rendered in this state. La. R.S. 13:3201(A). [Pg 9] She argues that Line's agreement to represent her was an agreement to supply services in this state because any lawsuit arising out of the automobile accident could only be filed in Louisiana, as the accident occurred in Louisiana, she was rear-ended by a Louisiana resident while riding with a Louisiana resident, and both vehicles were insured under Louisiana insurance policies. Further, by failing to take any action to further Alonso's case, when the specific action he needed to take was filing a lawsuit in Louisiana, he caused injury or damage through an omission in this state. Finally, because Line was hired to render professional services, if he had actually done some work he may have been entitled to "revenue from services rendered in this state." Thus, by accepting the representation of Alonso in connection with this accident, he subjected himself to being sued in this forum if he were to commit malpractice.

Line argues that minimum contacts do not exist because he never purposefully availed himself of the privileges

and benefits of Louisiana law. He claims that because he never intended to file suit in Louisiana, did not know that Louisiana law applied to the case, and never intended to do more than communicate with the insurance adjuster in Alabama and refer the case to another attorney in the event it could not be settled, he committed no purposeful acts directed towards Louisiana sufficient for the exercise of personal jurisdiction. We disagree.

La. R.S. 13:3201 clearly lists as a "contact" sufficient for the exercise of personal jurisdiction "contracting to supply services in this state" and "causing injury or damage by an offense or quasi offense committed through an act or omission in this state." While Line claims he did not intend this agreement to be a contract to supply services in this state, Line admits he never discussed this with his client and did not limit his representation of her to merely negotiating a settlement. Alonso has clearly alleged that he committed legal malpractice through an "omission," e.g. failure to file [Pg 10] suit, in this state. His alleged negligent act is that he should have researched this Louisiana traffic accident case, discovered that the case was governed by Louisiana law and that suit had to be filed within one year of the accident, and made sure that suit was filed within that time period. n5 His undertaking the representation of Alonso in connection with this Louisiana tort suit and his subsequent failure to take steps in Louisiana to protect Alonso's claim from prescribing, causing her damage in this state, satisfies the minimum contacts prong of the due process test.

As plaintiff has met her burden of proving minimum contacts, the burden then shifts to Line to prove that the assertion of jurisdiction would be so unreasonable in light of traditional notions of fair play and substantial

justice as to overcome the presumption of reasonableness. In this case, while Line testified that it is somewhat difficult to travel in that he is a large man with knee problems and cannot travel by car to Louisiana, we find that this burden is not so difficult as to overcome presumption of reasonableness. After all, Line previously traveled to Baton Rouge by plane to appear in court. Second, Louisiana has a significant interest in adjudicating a dispute involving legal malpractice committed against a Louisiana resident for failure to file lawsuit timely in Louisiana. Third, the plaintiff resides in Louisiana, satisfying her interest in convenient and effective relief, and the case out of which the malpractice occurred arose in Louisiana, making for an efficient resolution of this controversy. Finally, the only other state whose interest could possibly be affected by the assertion of jurisdiction by this Court is Alabama and Line has put forward no procedural or substantive policies of Alabama which would conflict with this state's exercise of jurisdiction over this case. [Pg 11]

CONCLUSION

By agreeing to represent a client in an automobile accident case that occurred in Louisiana between Louisiana residents, and to which Louisiana insurance policies applied, and by allegedly failing to take the necessary legal action in Louisiana to ensure that the case did not prescribe, the defendant in this case, an Alabama attorney, subjected himself to the jurisdiction of this state through La. R.S. 13:3201. Because we find that personal jurisdiction exists under the Long-arm Statute, we pretermit the issue of whether service of process on Line when he was in a Louisiana court to testify at the hearing on his exception of personal jurisdiction was sufficient to effect personal jurisdiction

over him.

DECREE

For the reasons stated herein, the judgment of the court of appeal is reversed insofar as it found no personal jurisdiction over Line, and the matter is remanded to the trial court for further proceedings.

REVERSED IN PART AND REMANDED.

FOOTNOTES

n1 Judge Fitzsimmons concurred as follows:

Fitzsimmons, J.

Fitzsimmons, J., concurs in the granting of the writ. Actual personal service on Mr. Line, while he was physically present in Louisiana, would usually satisfy any question of personal jurisdiction. However, he was in Louisiana only to plead the peremptory exception raising the objection of lack of personal jurisdiction in the same case for which he was served. We must recognize a jurisprudential rule granting the exceptor immunity from personal service on Louisiana suits while physically present in Louisiana to encourage litigants to come before the court and argue the lack of personal jurisdiction, and protect the right to litigants that wish to represent themselves. To preserve the standard rule of attachment of jurisdiction upon personal service in the home state of the suit, this immunity from service would only apply to the case in which the exceptor pled and wished to argue the exception of lack of personal jurisdiction. With no valid personal service on Mr. Line, the absence of minimum contacts upheld his claim of lack of personal jurisdiction. For these reasons, I concur

in the grant of the writ.

n2 The court of appeal found no minimum contacts sufficient to confer personal jurisdiction over the law firm. Although no one has seriously addressed Louisiana's jurisdiction over the law firm, we do not disturb the court of appeal's ruling on this issue. We note that Line, and not his law firm, was hired by plaintiff, that no service was made on the law firm other than under the long-arm statute, and that plaintiff has not established sufficient minimum contacts with the law firm, with which she had no contract.

n3 In reaction to the United States Supreme Court decision of World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980), in 1984, Subsection (h) was added to provide for jurisdiction over a cause of action arising from a nonresident's manufacture of a product or component part of a product which causes injury or damages in this state under certain circumstances. Subsection (h), now subsection (8), provides:

Manufacturing of a product or component thereof which caused damage or injury in this state, if at the time of placing the product into the stream of commerce, the manufacturer could have foreseen, realized, expected, or anticipated that the product may eventually be found in this state by reason of its nature and the manufacturer's marketing practices.

However, as further explained in Ruckstuhl:

. . . realizing that the Long-arm Statute still did not really extend to the limits allowed by due process, in 1987, the legislature amended La. R.S. 13:3201 by Acts 1987, no. 418 to add Subsection B which provides:

In addition to the provisions of [13:3201(A)], a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and the Constitution of the United States.

n4 "In interpreting the due process clause, the United States Supreme Court has recognized a distinction between two types of personal jurisdiction, namely 'general' and 'specific' jurisdiction." A & L Energy, Inc. v. Pegasus Group, 00-3255 (La. 6/9/01), 791 So. 2d 1266, 1271, cert. denied, 534 U.S. 1022, 122 S. Ct. 550, 151 L. Ed. 2d 426 (2001) (citing de Reyes, supra). "Specific jurisdiction over a nonresident defendant is appropriate when that defendant has purposefully directed its activities at residents of the forum state and the litigation results from alleged injuries that arise out of or relate to those activities." Id. (Citing Burger King, 471 U.S. at 473, n. 15). "General jurisdiction, on the other hand, will attach where the nonresident defendant's contacts with the forum state, although not related to the plaintiff's cause of action, are continuous and systematic." Id. However, "the classification of general versus specific jurisdiction merely serves as an analytical tool to categorize the degree of interrelation between the defendant's activities, the forum, and the cause of action; the same two-part due process evaluation must be conducted considering the fats in each individual case." Id.

n5 As Line was unable to practice in Louisiana, his duty was to timely advise plaintiff that she needed a Louisiana lawyer, or, failing that, to otherwise secure Louisiana counsel, to file suit within the prescriptive period.

No. 2002 CW 0706

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

PAMELA ALONSO,

v.

BILLIE B. LINE, JR. AND
WISNER, ADAMS, WALKER & LINE, P.C.

In re. Billie B. Line, Jr., and Wisner, Adams, Walker & Line, P.C., applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 479-957, Division "H".

Filed September 24, 2002

BEFORE: FITZSIMMONS, GUIDRY AND PETTIGREW, JJ.

WRIT GRANTED. The trial court's judgment denying relators' exception of lack of personal jurisdiction is hereby reversed, and judgment is rendered in favor of Billie B. Line, Jr. and Wisner, Adams, Walker & Line, P.C. on the basis that there were insufficient minimum contacts with the State of Louisiana to exercise personal jurisdiction over the nonresident defendants. See LSA-R.S. 13:3201; LSA-C.C.P. art, 930; and Griffith v. French, 97-2635, p. 3 (La. App. 1st Cir. 12/28/98), 723 So.2d 1140, 1142; writ denied, 99-0220 (La. 3/19/99), 790 So.2d 116,
Fitzsimmons, J., concurs in the granting of the writ. Actual personal service on Mr. Line, while he was physically present in Louisiana, would usually satisfy any question of personal jurisdiction. However, he was in Louisiana only to plead the peremptory exception

raising the objection of lack of personal jurisdiction in the same case for which he was served. We must recognize a jurisprudential rule granting the exceptor immunity from personal service on Louisiana suits while physically present in Louisiana to encourage litigants to come before the court and argue the lack of personal jurisdiction, and protect the right of litigants that wish to represent themselves. To preserve the standard rule of attachment of jurisdiction upon personal service in the home state of the suit, this immunity from service would only apply to the case in which the exceptor pled and wished to argue the exception of lack of personal jurisdiction. With no valid personal service on Mr. Line, the absence of minimum contacts upheld his claim of lack of personal jurisdiction. For these reasons, I concur in the grant of the writ.

COURT OF APPEAL, FIRST CIRCUIT
DEPUTY CLERK OF COURT
FOR THE COURT

NUMBER 479,957 DIVISION H

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

PAMELA ALONSO

v.

BILLIE B. LINE, JR. AND WISNER,
ADAMS, WALKERN AND LINE, P.C.

FILED MARCH 15, 2002

WRITTEN REASONS

This matter is before the court after a hearing on an exception of lack of personal jurisdiction. The plaintiff, Pamela Alonso, was injured in an automobile accident in Baton Rouge, Louisiana, on January 14, 1998. At the time of the accident she was a resident of Alabama. In March, she contacted an attorney friend, Billie Line, in Alabama to represent her. Her petition alleges that he failed to timely file her action and allowed it to prescribe. On January 11, 2001, she filed a malpractice suit in Baton Rouge against Line for failing to timely pursue the matter. On January 22, 2001, Line was served through the Louisiana Long Arm Statute. He did not contest service, but entered an exception of personal jurisdiction. The hearing was held on December 3, 2001, at which Line appeared and testified concerning his lack of contacts with this state. While he was waiting in the courtroom for his hearing to commence, the plaintiff had the sheriff serve him with an additional copy of the suit.

Line testified that his only contact with Louisiana was when he was a free agent with the New Orleans Saints in 1971 when he trained with them in Hattiesburg, Mississippi. He is not licensed to practice law in Louisiana and has never solicited business in this state or advertised in this state. Upon completing law school in 1992, he settled in Alabama where he was admitted to practice. He is not licensed to practice in any other state. No members of his law firm are licensed to practice in Louisiana. Line had performed legal work for Ms. Alonso's mortgage brokerage firm in Alabama. She contacted him in Alabama to represent her in the auto accident matter. Line testified that he was under the impression that venue was always proper at the residence of the plaintiff and, therefore, thought he could handle the matter in Alabama. He believed he could settle the matter and contacted a claims specialist with State Farm in Huntsville, Alabama. He planned to refer the matter to an attorney friend if the case had to go to trial. He obtained some medical records, which he forwarded to the adjuster. However, he did little on the case until January 11, 2000, when he contacted the adjuster he was informed that the file had been closed and was no longer viable. Since Alabama has a two-year statute of limitations, he contacted a lawyer in Louisiana to determine whether the case was still feasible. It was then that he learned that Louisiana had a one-year prescriptive period. He contacted Ms. Alonso and informed her of the mix up and also apologized to her.

Alonso moved to Louisiana in June 1999 and contacted Line in Alabama to represent her in a matter involving a business lease in Alabama. He represented her in this matter and managed to settle it. She contacted him in that matter and he had several telephone conversations with her concerning the lease.

Line argues that there is no "general jurisdiction" over him because the few contacts he has had with the state of Louisiana have not been continuous and systematic. La. R.S. 12: 3201 provides:

> A court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a course of action arising from any one of the following activities performed by the nonresident;
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> (1) Transacting any business in this state.
> (2) Contracting to supply services or things in this state,
> (3) Causing injury or damage by an offense or quasi-offense committed through an act or omission in this state.
> (4) Causing injury or damage in this state by an offense or quasi-offense committed through an act or omission outside of this state if her regularly does or solicits business, or engages in any other persistent course of conduct, or derives revenue from goods used or consumed or services rendered in this state.
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> 13:3201 (B) provides that a Louisiana court, in addition to Subsection A, may exercise jurisdiction "on my basis consistent with the constitution of this state and of the Constitution of the United States."

Citing, Griffith v. French, 97-2635 (La. App. 1 Cir. 1998), 723 So.2d 1140, Line points out the appropriate inquiry is whether or not sufficient purposeful minimum contacts with the forum state relating to the cause of action are present. If minimum contacts are found, then the court

should engage in a reasonableness inquiry which involves weighing the burden on the defendant in litigating in the forum state. He correctly suggests that the reasonableness inquiry is only reached after a finding of purposeful minimum contacts with the forum. Asahi Metals Indus. Co. v. Superior Court, 480 U.S. 102, 113 (1987). If minimum contacts are found, the inquiry should consider such factors as the burden on the defendant to litigate in the forum state, the forum state's interest in the controversy, the plaintiff's interest in obtaining convenient and effective relief, the judicial system's interest in obtaining an efficient resolution of the controversies, and the state's shared interest in fostering fundamental substantive policies.

At the hearing on the exception both Alonso and Line testified. There was no dispute between them. Ms. Alonso stated she moved to Louisiana in 1999. She previously had a mortgage company in Huntsville, Alabama, for which Line did the closings. She had known him since 1996, in March 1998, two months after the accident in Baton Rouge, she contacted Line to represent her. She referred all contact with the insurance adjuster to Line. In the fall or winter of 1999 she contacted him for the status of the matter. He informed her he would check on it. Later he informed her that Louisiana had a one-year statute of limitations and the case had prescribed. At the time of the accident she stated that she had lived in Alabama for 18 years. She initiated the contact with Line. At that time neither she nor Line knew she would move to Louisiana. She did not decide to do so until early 1999. After she moved here she stated that Line performed minimal legal work for her involving a business lease in Alabama. She contacted Line in Alabama on that matter also.

Line testified that he intended to settle the matter for

Ms. Alonso or refer it to an attorney friend who handled personal injury cases. Until his conversation with the adjuster in late 1999, he had no idea the suit could not be filed in Alabama. Upon being informed of the one-year prescriptive period, he contacted a lawyer in New Orleans to confirm that this was correct. He reiterated that his only previous contact with Louisiana was when he had a try out for the New Orleans Saints football team. The summer training camp was in Mississippi, but he did make the team until the exhibition season was over. He played professional football for various teams including the Canadian League. He worked in the aerospace engineering field and obtained a law degree because he needed an advanced degree for promotions. He stated that about 5-15% of his practice is litigation. He is only licensed to practice law in the state of Alabama. He has never enrolled in any other state. He has no business interests in Louisiana, does not advertise here, has no web site, and has no contacts with Louisiana. The plaintiff contacted him in Alabama to handle the automobile accident and the lease problem which involved her former business in Alabama.

In analyzing the statute, it is clear to this court that Line does not meet the criteria in either section 1 or 4. He has not transacted any business in Louisiana and does not regularly conduct or solicit business or engage in any persistent course of conduct in Louisiana. Thus, any jurisdiction must be based upon either section 2 or 3. Alonso argues that Line's agreement to represent her in a personal injury case that could only have been properly filed in Louisiana was an agreement to supply services in this state, thereby, satisfying section 2. She also argues that failing to take any action to further her case, he caused damage by an offense or quasi offense committed through an omission in this state. Thus, it fits

within the parameters of section 3. She also argues that his agreement to represent her fits the criteria of section 4 because he would have received revenue for services rendered in Louisiana in properly pursuing her tort claim.

Having discussed the positions of the parties relative to the issue of minimum contacts and reasonableness of pursuing the claim in Louisiana, it is necessary to discuss the other issue before deciding that issue of jurisdiction. When Line appeared in court on December 3, 2001, he was served with the suit. Alonso argues that this service on the defendant, present in the jurisdiction of the court, moots the previous arguments. She suggests that it was not necessary for him to appear in person to properly present his position in the exception. While citing no Louisiana cases on the issue, the parties have cited persuasive federal jurisprudence and an Alabama case. Line does cite several Louisiana cases for the proposition that a defendant can make a "special" appearance to challenge the jurisdiction of a court and may conduct discovery, depose witnesses, and cross-examining witnesses. Moore v. Central Louisiana Electric Company, 257 So.2d 702 (La. App. 3 Cir. 1972); Atkins v. Atkins, 588 So.2d 407 (La. App. 2 Cir. 1991); Landry v. Gibbens, 665 So. 2d 1176 (La. App. 4 Cir. 1995). Line suggests that the subsequent service was redundant and ineffective because he had already been served under the Long Arm Statute and was not contesting the service; he was contesting the jurisdiction. Line cites Lester v. Lester, 637 So.2d 1374 (Ala. Civ. App. 1994) in support of his position. Mrs. Lester sought to have her husband's divorce judgment canceled because the court lacked personal jurisdiction over her. Service of process had been attempted by publication. The appellate court found service was insufficient and remanded the case for the trial court to

determine the jurisdiction issue. Mrs. Lester made a special appearance to argue the motion contesting the court's jurisdiction. The husband had her personally served with the summons and petition during the hearing, The trial court found it had jurisdiction based on the personal service and rendered judgment on the divorce. The appellate court reversed finding that Mrs. Lester was immune from service of process under these facts. It cited Stewart v. Ramsey, 242 U.S. 128, 37 S.Ct. 44, 61 L.Ed 192 (1916) it) support of this position:

> It is founded in the necessities of the judicial administration, which would be often embarrassed, and sometimes intercepted, if the suitor might be served with process while attending upon the court for the protection of his rights, or the witness while attending to testify. [Lester, at 1375 citing Stewart at 46]

The plaintiff' cites Burnham v. Superior Court, 110 S.Ct. 2105, 495 U.S. 604 (1990) and Bordello v. Dennett, 770 So.2d 433 (La. App. 1 Cir. 2000) to support her position that service within the state confers personal jurisdiction. Line attempts to distinguish them because neither dealt with a situation in which someone had already been served by the Long Arm Statute and was served again. In Burnham, the defendant husband, a New Jersey resident, was served with his wife's petition for divorce in California while in the state on business and to visit his children. The Court affirmed that personal service on a defendant who is present in the forum state was sufficient to confer jurisdiction. In Bordelon, the father, who was raising the child in Louisiana, served the mother with two petitions, one for child support and one for a modification of visitation. The mother excepted to personal and subject matter jurisdiction. The court found subject matter and

personal jurisdiction on the visitation issue, but found a lack of personal jurisdiction on the child support issue. When the defendant came to Louisiana for a hearing on visitation, the plaintiff personally served her with another rule for child support. The court of appeal found that Louisiana courts lacked subject matter jurisdiction over a Virginia divorce decree. Therefore, the personal jurisdiction issue was moot. However, the court did find that personal service would have been sufficient to confer jurisdiction under the circumstance of that case.

Somewhat persuasive is the case of Gillan v. Jones, 157 So.2d 598, 157 So.2d 598 (La. App. 2 Cir. 1963). This suit was instituted as a possessory action coupled with a demand for damages for wrongfully cutting timber on a tract of land located in the Mississippi River in Madison Parish, Louisiana. The Jones defendants were residents of Mississippi and objected to the personal jurisdiction of the court. On the date the exceptions were set for trial, the defendant Howard Jones was present in the courthouse at Tallulah, Madison Parish, Louisiana, and was served with citation and a copy of the petition. The court stated:

> "While it is argued by counsel for Jones that he was present on the date and in the place set forth,...for the purpose of testifying in support of defendants' exceptions,., there is noting in the record which sustains this statement. All of the matters which were before the court and fixed for hearing on February 5, 1960, were preliminary pleadings and there is no indication whatsoever that any taking of testimony was either necessary or even contemplated by the parties. Therefore, it can only reasonably be

> assumed that the presence of Howard L. Jones was entirely voluntary and was neither necessary nor required." Gillan, at 603.

In the present case there was no indication of why it was necessary for Line to be present, and he certainly was under to duty to be present. At the beginning of the hearing, his counsel did state that he was appearing for the sole purpose of the exception. However, this was subsequent to and a reaction to the service of the petition, prior to the hearing. It is the court's opinion that the facts in Gillan are must like those in the present case. Therefore, the exception of lack of jurisdiction over the person of the defendant, Billie Line, is denied.

Baton Rouge, Louisiana, this 15th day of March, 2002.

Judge, Nineteenth Judicial District Court